



**3510-07-P**

**DEPARTMENT OF COMMERCE**

**Bureau of the Census**

**15 CFR Part 30**

**[Docket Number: 140905758-8166-02]**

**RIN 0607-AA54**

**Foreign Trade Regulations (FTR): Clarification on the Collection and Confidentiality of Kimberley Process Certificates**

**AGENCY:** Bureau of the Census, Commerce Department.

**ACTION:** Final rule.

**SUMMARY:** The Bureau of the Census (Census Bureau) issues this final rule amending its regulations to clarify that the data collected from the Kimberley Process Certificates (KPCs) are collected in compliance with the Clean Diamond Trade Act. In addition, this rule clarifies the submission requirements and permissible uses of the KPCs.

**DATES:** This final rule is effective **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**FOR FURTHER INFORMATION CONTACT:** Dale C. Kelly, Chief, International Trade Management Division, U.S. Census Bureau, 4600 Silver Hill Road, Washington, DC 20233-6010, by phone at 301-763-6937; by fax at 301-763-8835; or by e-mail at [dale.c.kelly@census.gov](mailto:dale.c.kelly@census.gov).

## **SUPPLEMENTARY INFORMATION:**

### **Background**

The Census Bureau is amending the Foreign Trade Regulations (FTR) (15 CFR part 30) to clarify that the Kimberley Process Certificates (KPCs) are not collected under Title 13, United States Code (U.S.C.). Instead, the KPCs are collected under the Clean Diamond Trade Act (CDTA) (Pub. L. 108-19, 19 U.S.C. 3901, *et seq.*) and Executive Order 13312, entitled “Implementing the Clean Diamond Trade Act” (68 FR 45151, July 29, 2003). The CDTA and Executive Order 13312 require that the importation into, and exportation from, the United States of any rough diamonds be controlled through the Kimberley Process Certification Scheme (KPCS). The KPCS calls on Participants (*i.e.*, governments participating in the KPCS), including the United States, to ensure that any shipment of rough diamonds exported to, or imported from, the territory of a Participant be accompanied by a valid KPC, and maintain and publish statistics on the importation and exportation of rough diamonds. The CDTA further provides that the United States should produce statistics on imports and exports of rough diamonds and make these statistics available for analysis by interested parties, including other governments participating in the KPCS.

Consistent with the CDTA, Executive Order 13312, and the KPCS, the Office of Foreign Assets Control’s Rough Diamonds Control Regulations (31 CFR part 592) require that an original KPC accompany all shipments of rough diamonds imported into, or exported from, the United States. The FTR requires that Participants provide an original KPC to the Census Bureau for all import and export shipments of rough diamonds. The data collected from the KPCs are separate and distinct from the statistical data collected under Title 13, U.S.C., and are not governed by the confidentiality provisions of that title.

Finally, the U.S. Department of Homeland Security and the U.S. Department of State concur with the revisions to the FTR as required by 13, U.S.C., 302, and Public Law 107-228, div. B, title XIV, section 1404.

## **Response to Comments**

The Census Bureau received two comments on the notice of proposed rulemaking (NPRM) published in the *Federal Register* on September 29, 2017 (82 FR 45528). One of the comments was unrelated to the proposal; however, a summary of the other comment and the Census Bureau's response is provided below.

Comment. The commenter stated that, to help ensure compliance with the law and avoid misunderstandings, the Census Bureau's final rule should make clear, for the benefit of both the public and Department of Commerce employees, that the rule changes do not displace the confidentiality provisions of any statute other than Title 13. The commenter suggested adding the language, "nothing in this subsection affects the applicability of confidentiality provisions of a law other than Title 13, U.S.C.," to §§ 30.4(e) and 30.60 of the FTR.

Response. The Census Bureau has reviewed this comment and agrees that clarifying language can be added to address this concern in § 30.60, because it addresses the confidentiality of KPCs, including voided KPCs. Therefore, the Note to § 30.60, as amended by this final rule, will read as set out in the regulatory text at the end of the document.

## **Changes to the Proposed Rule Made by This Final Rule**

As discussed above, after consideration of the comment received, the Census Bureau includes in this final rule an additional clarifying sentence at the end of the language in the proposed rule

regulatory text for the Note to § 30.60. For clarification, consistent with terminology used in the FTR, the Census Bureau also includes in this final rule the addition of the phrase “by the USPPI or U.S. authorized agent” to the proposed rule regulatory text revising § 30.7(c).

## **Program Requirements**

This final rule amends relevant sections of the FTR in order to clarify requirements, consistent with the CDTA and Executive Order 13312. Specifically, in addition to the clarifying changes described above, this final rule makes the following revisions to the FTR in 15 CFR part 30:

- Revise § 30.1(c) to add the definition “Kimberley Process Certificate” as a technical amendment.
- Revise § 30.1(c) to add the definition “Voided Kimberley Process Certificate” to clarify the term.
- Revise § 30.4 to add paragraph (e) to clarify the filing procedures for voided KPCs and to address that the collection of KPCs is not pursuant to Title 13, United States Code.
- Revise § 30.7(c) to clarify that KPCs must be provided to the Census Bureau immediately after export of the shipment from the United States.
- Revise § 30.50(c) to clarify that KPCs must be provided to the Census Bureau immediately after entry of the shipment in the United States.
- Revise § 30.60 to add a note clarifying that KPCs are not considered Electronic Export Information (EEI) and are not confidential under Title 13, U.S.C.
- Revise § 30.70 to clarify how violations of the CDTA will be enforced.

## **Rulemaking Requirements**

### *Regulatory Flexibility Act*

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this rule will not have a significant impact on a substantial number of small entities. Currently, a KPC must be submitted for all imports or exports of rough diamonds. This rule requires that KPCs be provided to the Census Bureau immediately after either entry in or export from the United States. It replaces the previous requirement to provide the KPC to the Census Bureau in advance.

This action requires that U.S. Principal Party in Interests (USPPIs) or authorized agents in the United States file export information to the Automated Export System (AES) for all shipments where an EEI record is required by the FTR. The SBA's table of size standards indicates that businesses that are the USPPI or authorized agent and file EEI are considered small businesses if they employ less than 500 people. Based on Exhibit 7a of the 2015 *Profile of U.S. Exporting Companies*, the Census Bureau estimates that there are 295,000 USPPIs that are considered small business entities under the SBA definition, and more than 90 percent of those USPPIs use authorized agents to file export information. The Census Bureau is unable to estimate or determine the number of authorized agents.

The Census Bureau does not expect these clarifications of requirements to significantly affect the small businesses that file through the AES. The majority of agents require use of a computer to perform routine tasks, such as filing through the AES. These agents are unlikely to be significantly affected by these clarifications of requirements, as they already possess the necessary technology and equipment to submit the information through the AES. It is not necessary for small businesses to purchase software for this task, because *AES Direct*, a free

Internet-based system, is provided for the electronic submission of export information. The new requirements will have a minimal impact on response burden. For these reasons, this rule will not have a significant economic impact on a substantial number of small entities.

#### *Executive Orders*

This rule has been determined to be not significant for purposes of Executive Order 12866. This proposed rule is not an Executive Order 13771 regulatory action because this proposed rule is not significant under Executive Order 12866. This rule does not contain policies with federalism implications as that term is defined under Executive Order 13132.

#### *Paperwork Reduction Act*

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a current, valid Office of Management and Budget (OMB) control number. This rule contains a collection-of-information subject to the requirements of the PRA (44 U.S.C. 3501 *et seq.*) and that has been approved under OMB control number 0607-0152.

### **List of Subjects in 15 CFR Part 30**

Economic statistics, Exports, Foreign trade, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Census Bureau amends 15 CFR part 30 as follows:

### **PART 30 – FOREIGN TRADE REGULATIONS**

1. The authority citation for 15 CFR part 30 continues to read as follows:

**Authority:** 5 U.S.C. 301; 13 U.S.C. 301-307; Reorganization plan No. 5 of 1990 (3 CFR 1949-1953 Comp., p. 1004); Department of Commerce Organization Order No. 35-2A, July 22, 1987, as amended, and No. 35-2B, December 20, 1996, as amended; Pub. L. 107-228, 116 Stat. 1350.

2. Amend § 30.1(c) by adding definitions for “Kimberley Process Certificate (KPC)” and “Voided Kimberley Process Certificate” in alphabetical order to read as follows:

**§30.1 Purpose and definitions.**

\* \* \* \* \*

(c) \* \* \*

*Kimberley Process Certificate (KPC).* A forgery resistant document used to certify the origin of rough diamonds from sources which are free of conflict.

\* \* \* \* \*

*Voided Kimberley Process Certificate.* A Kimberley Process Certificate intended to be used for the exportation of rough diamonds from the United States that has been cancelled for reasons such as loss or error.

\* \* \* \* \*

3. Amend § 30.4 by adding paragraph (e) to read as follows:

**§30.4 Electronic Export Information filing procedures, deadlines, and certification statements.**

\* \* \* \* \*

(e) *Collection of KPCs and voided KPCs.* Any voided KPC must be faxed by the voiding party to the Census Bureau on (800) 457-7328, or provided by other methods as permitted by the Census Bureau, immediately upon voiding. The collection of KPCs, including voided KPCs, is

performed pursuant to the Clean Diamond Trade Act, Public Law 108-19, 19 U.S.C. Section 3901 *et seq.* (CDTA), and Executive Order 13312, and not Title 13, U.S.C.

4. Amend § 30.7 by revising paragraph (c) to read as follows:

**§30.7 Annotating the bill of lading, air waybill, or other commercial loading documents with proof of filing citations, and exemption legends.**

\* \* \* \* \*

(c) Exports of rough diamonds classified under HS subheadings 7102.10, 7102.21, and 7102.31 require the proof of filing citation, as stated in paragraph (b) of this section, to be indicated on the Kimberley Process Certificate (KPC). In addition, the KPC must be faxed by the USPPI or U.S. authorized agent to the Census Bureau on (800) 457-7328, or provided by other methods as permitted by the Census Bureau, immediately after export of the shipment from the United States.

5. Amend § 30.50 by revising paragraph (c) to read as follows:

**§30.50 General requirements for filing import entries.**

\* \* \* \* \*

(c) The Kimberley Process Certificate (KPC) for all imports of rough diamonds classified under HS subheadings 7102.10, 7102.21, 7102.31 must be faxed by the importer or customs broker to the Census Bureau on (800) 457-7328, or provided by other methods as permitted by the Census Bureau, immediately after entry of the shipment in the United States.

6. Amend § 30.60 by adding a note to read as follows:

**§30.60 Confidentiality of Electronic Export Information.**



\* \* \* \* \*

**Note to § 30.60:** Kimberley Process Certificates (KPCs), including voided KPCs, provided to the Census Bureau pursuant to the Clean Diamond Trade Act, Executive Order 13312, and this part are not considered EEI and are not confidential under Title 13. KPCs and voided KPCs may be protected from public disclosure by the Privacy Act or other applicable nondisclosure statutes.

7. Amend § 30.70 by revising the introductory text to read as follows:

**§ 30.70 Violation of the Clean Diamond Trade Act.**

Section 8(c) of the Clean Diamond Trade Act (CDTA) authorizes U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE) to enforce the laws and regulations governing exports of rough diamonds. The Treasury Department's Office of Foreign Assets Control (OFAC) also has enforcement authority pursuant to section 5(a) of the CDTA, Executive Order 13312, and Rough Diamonds Control Regulations (31 CFR part 592). CBP, ICE, and OFAC are authorized to enforce provisions of the CDTA providing the following civil and criminal penalties:

\* \* \* \* \*

Dated: April 17, 2018.

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Ron S. Jarmin,  
Associate Director for Economic Programs,  
performing the non-exclusive functions  
and duties of the Director  
Bureau of the Census.

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